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March 7, 2008

Honorable Judge Kars
United States District Judge
United States District Court
300 Quarropas Street
White Plains, NY 10601-4150

MEMO ENDORSED

RE: **BOWEN vs. WESTCHESTER COUNTY, et.al.**
07-CV-6277

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: _____

Dear Honorable Judge Karss:

I write in response to Mr. Klasna's request to file a motion pursuant to F.R.C.P. Rule 12(c). If the Court is inclined to grant Mr. Klasna's request for a Rule 12 (c) motion, I ask that Plaintiffs be allowed to amend their complaint within thirty days of your Honor's order.

With respect to Mr. Klasna's argument, Plaintiffs agree to withdraw counts two, four and eight of their complaint as such claims are not proper claims under 42 U.S.C. §1983 and oppose any request for permission to file a Rule 12 (c) motion on the remain counts.

Although Count VII is not artfully written, it is not duplicative of Count I and dismissal at this point would be inappropriate. See Branum v. Clark, 927 F.2d 698, 705 (2d Cir.1991). Count I is based on violations of the Fourth Amendment in that the Defendants violated the Plaintiffs right to be free from excessive and unreasonable force. Count VII is based on due process, equal protection and discrimination violations. Counts three, five, and six are best addressed after discovery and in response to the Defendants summary judgment motions.

For the reasons set forth above, the Plaintiffs ask that if your Honor is inclined to grant Mr. Klasna's request for a Rule 12 (c) motion, they be allowed to amend their complaint within thirty days of your Honor's order.

Respectfully submitted,

James Michael Lenihan

cc: Chad L. Klasna, Esq. (via email and regular mail)

Matthew L. Gallagher, Esq. (via email and regular mail)

Plaintiff is given 30 days to
amend the complaint. Defendants may then
submit another pre-motion letter if they believe
a viable motion to dismiss can be made.
The conference for March 12, 2008 is cancelled.

SO ORDERED

KENNETH M. KARAS U.S.D.J.

3/10/08